

**MINUTES OF THE JUNE 2010 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

Date of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held on Tuesday, June 8, 2010, in Room 116, State Capitol, Des Moines, Iowa.

Members present: Representative Marcella Frevert, Chair, and Senator Wally Horn, Vice Chair; Senators Merlin Bartz, Thomas Courtney, John P. Kibbie, and James Seymour; Representatives David Heaton, Tyler Olson, Nathan Reichert, and Linda Upmeyer were present.

Also present: Joseph A. Royce and Michael Duster, Legal Counsel; Kathleen K. West, Administrative Code Editor, and Stephanie A. Hoff, Deputy Editor; T.J. Welton, on behalf of the Governor's office; fiscal staff; caucus staff; and other interested parties.

Convened Rep. Frevert convened the meeting at 9:35 a.m.

Fiscal overview Sue Lerdal presented the LSA fiscal report.

ADMINISTRATIVE SERVICES DEPARTMENT Jennifer Sandusky and Nancy Berggren represented the department.

ARC 8727B No questions on 60.1(7)“k,” indemnification of SERIP participants under Iowa Code chapter 669.

ARC 8764B No action on 60.3(5), which restricts the ability of a supervisory employee to bump a junior employee who is not being laid off. Discussion related to the effect of the legislation on the state's ability to attract supervisory employees, the option of hiring from outside the state vs. promoting from within, and conditions of voluntary demotions.

ARC 8781B No questions on 53.12 and 63.4(1) concerning the years of service incentive and exigency leave for covered service members.

CULTURAL AFFAIRS DEPARTMENT Mary Sundet-Jones represented the department.

ARC 8811B Proposed 13.5 pertains to cultural trust sustainability challenge grants. Sen. Bartz pointed out that language in Item 2 regarding alignment with the standard of conduct should be clarified and noted that some eligible gifts may also be listed as ineligible gifts.

HISTORICAL DIVISION Jerome Thompson and Kathy Gourley represented the division.

ARC 8721B Proposed 48.10 pertains to certification of project commencement under the historic preservation and cultural and entertainment district tax credits program. There was discussion regarding large and small projects and the reasons larger projects may require more time to reach the 10 percent expenditure level. These amendments do not require expenditure of 10 percent of the funds, but do require that the project be commenced. Ms. Gourley agreed to provide a summary of the comments to the committee and reported that the division intends to proceed with an Adopted and Filed Emergency After Notice in order to enable some large projects to continue despite their not having met the former expenditure requirement.

EDUCATIONAL EXAMINERS BOARD George Maurer represented the board.

ARC 8823B No action on 11.4(5) regarding respondent's receipt of a complaint.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA Charlie Smithson represented the board.

ARC 8826B No action on amendments to ch 4 pertaining to independent expenditure committees, reporting and disclosures. Discussion related to express advocacy, radio ads, YouTube clips and the requirements for the “paid for by” attribution. Sen. Bartz suggested a clarification of the factors to be considered in determining whether a publication is a sham newspaper.

ARC 8795B No questions on amendments to ch 4 concerning filing of campaign disclosure statements and reports.

Ethics and Campaign Disclosure Board (continued)

- ARC 8787B No questions on 4.6(1) regarding amended statement of organization.
- ARC 8788B No action on amendments to rule 4.33 regarding earmarked campaign contributions to include political party committees as well as PACs.
- ARC 8793B No questions on proposed 6.6 concerning dual executive branch compensation.
- ARC 8794B No action on proposed 6.10 regarding filing of reports disclosing sales of goods or services to state agencies by officials and employees.
- ARC 8805B No action on amendments to ch 8 concerning executive branch lobbying.
- ARC 8803B No questions on proposed 9.7, which relates to situations in which a person provides false information to the board during an investigation.

IOWA FINANCE AUTHORITY Mark Thompson and Lori Beary represented the authority.

- ARC 8709B No action on ch 37, recovery zone bond allocation, which provides for the allocation of both economic development bonds and facility bonds. Ms. Beary explained that allocations are for the cities and counties most impacted by the recession as demonstrated by a jump in their unemployment rate and mentioned that unused allocations revert back to IFA for reallocation. Sen. Bartz requested information on all the factors IFA considered in setting the allocations.
- ARC 8723B No questions on 12.3 and 12.4 regarding the low-income housing tax credit compliance monitoring manual.
- ARC 8724B No action on amendments to ch 30 concerning the qualified Midwestern disaster area bond allocation for the 78 counties affected by flooding or tornado.
- ARC 8725B No action on amendments to ch 33, water quality financial assistance program.
- ARC 8789B No action on amendments to ch 3, multifamily housing, for workforce housing loan assistance. Discussion pertained to the I-JOBS rules which will be Adopted and Filed Emergency.

CIVIL RIGHTS COMMISSION Mary Cowdrey represented the commission.

- ARC 8749B, ARC 8746B, ARC 8748B, ARC 8747B, ARC 8744B, ARC 8743B, ARC 8742B, ARC 8741B, ARC 8740B, ARC 8739B, ARC 8738B, ARC 8745B, ARC 8750B, ARC 8737B, ARC 8735B, ARC 8734B, ARC 8736B, and ARC 8733B were reviewed as a group. There were no questions; these amendments update the commission rules and comply with federal requirements.

LABOR SERVICES DIVISION Kathleen Uehling and Joe Walsh represented the division.

- ARC 8752B No action on proposed amendments to chs 173 and 177 pertaining to professional boxing and mixed martial arts. Sen. Bartz suggested inclusion of a definition of “professional” and questioned the requirement in 177.2(9)“(1)(5) for the social security number to appear on a photo identification issued by a governmental entity. Discussion related to the listing of prohibited acts and the referee’s discretion regarding issuance of a warning, deduction of points or disqualification of a contestant.

PUBLIC HEALTH DEPARTMENT Barb Nervig represented the department. Karla Fultz McHenry represented the Iowa Medical Society and the Polk County Medical Society.

- ARC 8783B No action on 29.8, which provides an exception through September 30, 2010, for an applicant not previously licensed as a master or journey person in the applicable discipline to take the examination for a master license. Ms. Nervig reported that applications became available June 1 and that 18 applications have been received.
- ARC 8791B Chapter 88 provides indemnification to individual volunteer health care providers and protected clinics providing health care services. Ms. McHenry commented that the medical societies are working with the department regarding the continuum of care, including preoperative and postoperative care.

- NATURAL RESOURCE COMMISSION** Tamara Mullen, Sherry Arntzen, and Jeff Kopaska represented the commission. Other interested parties included Phil Petersen and Steve Petersen on behalf of the Okoboji Yacht Club and Mark Tesar of the Clear Lake Yacht Club.
- ARC 8814B Ms. Arntzen explained that proposed ch 68 would restrict alcohol use at six beaches on the Iowa great lakes during the Fourth of July holiday, but that the restriction would not apply to picnicking areas, campgrounds, shelters or lodges. Sen. Kibbie expressed appreciation to the commission for scheduling a public hearing at Gull Point State Park. Sen. Bartz requested data on incidents that have occurred at these six beaches. Rep. Reichert expressed concern that there are not enough law enforcement officers to maintain order.
- ARC 8815B Amendments to ch 44 require a permit and impose a \$25 fee for each special event held. Mr. Kopaska stated that the fee is intended to offset the \$40,000 cost of a Web-based system for scheduling special events at state parks and making the information available to the public. Prior to the adoption of these amendments, groups applied for the entire season; these amendments require a separate application and fee for each event. Mr. Phil Petersen and Mr. Tesar expressed their concerns that the rule-making process was flawed and adequate public notice was not provided because the explanation in the preamble of the rule-making document did not accurately reflect the amendments. Mr. Tesar questioned the need for this new fee in addition to property taxes, boat registration fees, and dock fees already being paid to the state. Mr. Petersen emphasized that the sailing clubs do not have exclusive use of the waters during their weekly events. Mr. Steve Petersen commented that the fee is excessive for the students at the University of Iowa sailing club. Sen. Seymour and Rep. Upmeyer voiced their concerns about the burden the amendments impose on users of the public waters and encouraged the commission to work with affected parties and to consider an option for a season application.
- Motion Sen. Kibbie moved a 70-day delay on ARC 8815B.
- Motion carried On a unanimous voice vote, the motion carried.
- ARC 8821B No action on amendments to 61.2 and 61.4(5) concerning the definition of immediate family. Sen. Bartz reiterated his preference that the rules reflect the number of campers each site can accommodate, rather than define immediate family.
- ENVIRONMENTAL PROTECTION COMMISSION** Wayne Gieselman and Gene Tinker represented the commission. Commission Chair Charlotte Hubbell was also present.
- ARC 8398B In response to a letter from 28 legislators on the proposed amendments to ch 65, Mr. Gieselman addressed concerns about the definition of residence, the removal of tile intake covers, manure storage requirements, and the definition of common management. Mr. Gieselman clarified that while there is no specific storage requirement for small animal feeding operations, the runoff must not reach waters of the state. Sen. Kibbie expressed appreciation for EPC's response. Discussion related to federal, state, and local jurisdictions. Rep. Upmeyer asked that minutes of the commission meetings be posted in a timely manner.
- HUMAN SERVICES DEPARTMENT** Nancy Freudenberg and Jeff Anderson represented the department. Other interested persons included Mary O'Brien and Jeanette Luthringer on behalf of Visiting Nurse Service of Iowa, Deb Gimer of Calhoun County Public Health, Annette Koster of BVCS Empowerment, Kaye Dornath and Cheryl Nelson on behalf of Gingerbread Child Care Center of Buena Vista County, Wendy Taylor of North Iowa Community Action, Karen Doughan on behalf of Child Guidance Center/Child Care Resource and Referral of Central Iowa, and Kathi Maben of Dallas County Empowerment.
- ARC 8756B No action on proposed amendments to implement a brokerage program for the provision of nonemergency medical transportation.
- ARC 8719B No action on the proposed amendment to 65.4(2)"b" regarding replacement of EBT cards after three manually keyed transactions.
- ARC 8758B No questions on proposed amendments to 65.8, the methodology for determining the standard utility allowance for the Food Assistance Program.
- ARC 8712B No questions on 65.28, Food Assistance work requirements.

Human Services Department (continued)

- ARC 8713B No questions on the annual adjustment to premiums for employed persons with disabilities.
- ARC 8714B No questions on amendments to ch 78 concerning Medicaid eligibility.
- ARC 8722B No action on proposed 78.10 regarding coverage for oxygen and nutritional products.
- ARC 8757B Proposed amendments to ch 118 revise the child care quality rating system (QRS). Ms. Freudenberg commented that the voluntary program has been in existence since 2006, and that these amendments provide more criteria and points and raise the number of points required for each rating level. Mr. Anderson indicated that local child care nurse consultant (CCNC) assessments have not been conducted uniformly statewide and that these regulations can provide the standards that CCNC safety inspections had set for child care providers. Ms. O'Brien stated that since 2002, when Iowa was rated the lowest in terms of quality of child care, public health nurses have been trained to identify threats to health and safety that can be corrected and thereby improve the quality of child care. Ms. Luthringer noted that CCNCs are frequently on site to monitor compliance with the regulations. Ms. Gimer commented that CCNCs assist both in education of providers and implementation of the needed changes. Ms. Doughan expressed concern about removal of the on-site CCNC and stated that she supports on-site inspection by trained professionals administering the environmental rating scale. Ms. Taylor indicated that there is not enough oversight from the department and that she is more concerned about what's best for children than what's best for providers. Ms. Maben indicated that in addition to strong regulations, Iowa needs to implement best practices for the safety of children. Ms. Nelson commented that the department has not visited the site, but the CCNC is on site regularly to offer assistance. Ms. Koster commented on the necessity of the CCNC in her child care center. Ms. Dornath expressed her appreciation for the numerous services provided by the CCNC at her child care center. Rep. Reichert offered a positive first-hand account of how the QRS is working. Mr. Welton offered to set up a meeting between the department and concerned parties so that they can resolve their differences. Sen. Kibbie asked that the parties articulate the changes they want the department to make.
- ARC 8715B No questions on 156.9(1)"d," redetermination of foster group care costs.
- ARC 8716B No questions on amendments to ch 167 concerning juvenile detention home costs eligible for reimbursement.
- ARC 8717B No questions on amendments to ch 187 pertaining to aftercare services and PAL program eligibility and stipend.
- ARC 8718B No questions on 202.11(7) regarding the independent living program for youth transitioning from foster care.
- ARC 8785B No questions on amendments to ch 75 concerning referrals for support services for Medicaid applicants.
- ARC 8786B No questions on 75.11(2) regarding documentation of citizenship and identity.
- ARC 8832B No questions on proposed amendments to ch 78 pertaining to the consumer choices option for Medicaid HCBS waiver services.
- Special reviews Ms. Freudenberg presented four rule makings that will be Adopted and Filed Emergency. The rule makings pertain to Medicaid rate increases, reimbursements for supervised apartment living services, foster group care contracting, and foster family care.
- Rep. Heaton noted a concern raised by Rep. Schulte that continuing education requirements have resulted in a shortage of respite care providers under the children's mental health waiver. Rep. Heaton asked the department to advise the committee regarding its plans to ensure that respite care will be available. Ms. Vermeer agreed to provide the committee with the RFI prepared for Rep. Schulte.

Committee business The minutes of the May 10, 2010, meeting were approved.
The next meeting was scheduled for Tuesday, July 13, 2010; the committee scheduled subsequent meetings for the statutory dates: August 10, September 14, October 12, November 9, and December 14.
The committee extended its sympathy to the family of Representative Paul Bell.
Rep. Frevert asked that the minutes reflect the committee’s appreciation for the legal counsel’s annual report and for the secretary’s many years of “dedicated, professional, gracious, and accurate” service.

Adjourned The meeting was adjourned at 4:45 p.m.

Respectfully submitted,

Kathleen K. West

APPROVED:

Chair Marcella Frevert

Vice Chair Wally Horn